

SERVED: September 11, 2008

NTSB Order No. EA-5406

UNITED STATES OF AMERICA  
**NATIONAL TRANSPORTATION SAFETY BOARD**  
WASHINGTON, D.C.

Adopted by the NATIONAL TRANSPORTATION SAFETY BOARD  
at its office in Washington, D.C.  
on the 9<sup>th</sup> day of September, 2008

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Petition of	)	
	)	
GEORGE BRUCKERT III	)	
	)	
for review of the denial by	)	Docket SM-4788
the Administrator of the	)	
Federal Aviation Administration	)	
of the issuance of an airman	)	
medical certificate.	)	
_____	)	

**OPINION AND ORDER**

Petitioner and the Administrator have both appealed from the oral initial decision and order issued by Administrative Law Judge William R. Mullins following an evidentiary hearing held from January 29, 2008 to January 31, 2008.<sup>1</sup> By that decision, the law judge denied petitioner's appeal of the federal air surgeon's denial of an airman medical certificate.

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<sup>1</sup> A copy of the initial decision, an excerpt from the hearing transcript, is attached.

The law judge found that the Administrator made a *prima facie* showing that petitioner has an established medical history or clinical diagnosis of a personality disorder or other mental condition that makes petitioner unable to safely perform the duties or exercise the privileges of the airman certificate applied for. The law judge also found that petitioner did not meet his burden of showing that he meets the mental standards for issuance of a medical certificate. On the other hand, the law judge found that the Administrator did not prove that petitioner has a medical history or clinical diagnosis of a psychosis. We deny petitioner's appeal and affirm the law judge's finding and ruling as to the personality disorder, but we grant the Administrator's appeal and reverse the law judge's finding and ruling regarding the lack of an established medical history or clinical diagnosis of a psychosis.

The federal air surgeon's denial of the application for a medical certificate in this case was predicated on petitioner's history of obsessive compulsive disorder, psychosis, chronic paranoia, major depression, and disabling personality disorder—conditions that render applicants ineligible for airman medical certification under 14 C.F.R. §§ 67.207(a), 67.207(c), 67.307(a) and 67.307(c).<sup>2</sup> The Administrator's appeal challenges the law

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<sup>2</sup> Under §§ 67.207(a)(1) and (2), and 67.307(a)(1) and (2), an established medical history or clinical diagnosis of a psychosis

judge's decision as to §§ 67.207(c) and 67.307(c) (psychosis), and petitioner's appeal challenges the law judge's decision as to §§ 67.207(a) and 67.307(a) (other personality disorder or mental condition).

The Administrator appeals the law judge's decision that a finding of a psychosis under the FARs requires proof of a diagnosis under the DSM-IV.<sup>3</sup> The Administrator points out in his appeal brief, as he did at the hearing, that the FARs provide the definition of psychosis:

... As used in this section, "psychosis" refers to a mental disorder in which ... [t]he individual has manifested delusions, hallucinations, grossly bizarre or disorganized behavior, or other commonly accepted symptoms of this condition....

Sections 67.207(a)(2) and 67.307(a)(2). The Administrator refers to repeated references in petitioner's voluminous airman medical file, and to expert witness testimony regarding medical history and diagnosis of psychotic symptoms. The Administrator

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(..continued)

or a severe personality disorder is specifically disqualifying for a second-class and third-class airman medical certificate. Under §§ 67.207(c) and 67.307(c), an airman is ineligible for a medical certificate if the person has a personality disorder or other mental condition that the federal air surgeon finds will make, or may reasonably be expected to make, the person, for the duration of the airman medical certificate, unable to safely perform the duties or exercise the privileges of the airman certificate applied for or held.

<sup>3</sup> American Psychiatric Association: *Diagnostic and Statistical Manual of Mental Disorders*, Fourth Edition. Washington, DC, American Psychiatric Association, 1994.

argues that denial of a medical certificate for psychosis is proper in this case. He relies on a case in which we held that a petitioner was ineligible for a medical certificate due to a history of psychosis, and that the petitioner did not produce competent medical evidence in support of his position that he was qualified for medical certification.<sup>4</sup> The Administrator also cites a case holding that symptoms of psychosis were sufficient to find an airman disqualified under §§ 67.207(a)(2) and 67.307(a)(2).<sup>5</sup>

In reply, petitioner primarily argues that he does not have an established history or clinical diagnosis of psychosis because there is no specific diagnosis of psychosis under the DSM-IV in his medical record. Petitioner couches the issue in terms of a credibility assessment and a finding of fact. He first argues that, "the findings and conclusions of the Administrative Law Judge, who personally heard the testimony and observed the witnesses, that Mr. Bruckert never had a 'psychosis,' are correct and should not be disturbed." Next, petitioner argues, "the Federal rules require that the hearing judge's specific findings as to the absence of psychosis remain undisturbed absent clear and convincing evidence to the

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<sup>4</sup> Petition of Rasmussen, NTSB Order No. EA-5059 at 2 (2003).

<sup>5</sup> Petition of Lenser, NTSB Order No. EA-5234 at 7-8 (2006).

contrary."

From the start, we note that petitioner's voluminous airman medical file includes evidence of admissions to psychiatric facilities and numerous references to symptoms of psychosis, obsessive compulsive disorder, paranoia, major depression, and other significantly disabling personality disorders. The evidence also shows that petitioner took psychotropic medication for significant periods. We should also note, however, that, unlike the petitioner in Rasmussen, supra, petitioner in the instant case provided evidence that he has been doing well for several years. He presented expert witnesses who support his bid for an airman medical certificate, and whose testimony supports the contention that petitioner has improved. We find, however, that the evidence of a history of symptoms of psychosis, a specifically disqualifying condition, and the testimony of the Administrator's expert witnesses, who possess superior qualifications in aviation medical standards, outweigh petitioner's arguments and expert witness testimony. Even two of petitioner's own experts support the position of the Administrator regarding the evidence of psychosis.<sup>6</sup>

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<sup>6</sup> See, e.g., Dr. Altman's testimony:

[my opinion as to a treating psychologist's and a treating psychiatrist's determination or observations of psychosis is that the] FAA has their own definition of what psychosis is. ... And one sub-element is

Regarding petitioner's two arguments cited above, we do not consider the assessment of this issue to be a credibility determination.<sup>7</sup> We further note that the Federal Rules of Civil Procedure do not form a part of the Board's rules of practice, and petitioner's reliance on them is misplaced.<sup>8</sup>

We also do not find that petitioner's contention that the absence of current symptoms is persuasive enough to satisfy his

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(..continued)

disorganized behavior. And there's evidence that his behavior was disorganized.... [I]n the ... psychological testing ... he was so disorganized that he couldn't do a, a paper and pencil test. ... [F]or that reason ... [the psychologist] had to limit the scope of the testing. That test isn't difficult. But he couldn't do it. I took that as the clearest evidence. ... [I]f you look at the records ... his counselor's providing day after day of description of an individual who's having a great deal of difficulty focusing and is quite disorganized and has intrusive thoughts.... So ... under that definition he has psychotic symptoms extending over a long period of time. ... [T]here are other definitions of psychosis. But ... the FAA has a definition that is broader than the definition ... in clinical psychiatry.

Tr. at 173-74; and Dr. Dampitz's testimony:

[being possessed by the devil, or the term, devil] was a recurrent theme.... [As petitioner's] obsessive compulsive disorder went along in time, the theme became part of his obsessive compulsive thinking.

Tr. at 225.

<sup>7</sup> See, e.g., Administrator v. Doe, 4 NTSB 84, 90 (1983).

<sup>8</sup> See, e.g., Administrator v. Kreuzhage, NTSB Order No. EA-4209 at 3 (1994).

burden of proving that he is eligible for a medical certificate. We have previously stated that, regardless of a petitioner's current condition, "a psychotic episode or psychosis" is sufficient to deny a petitioner's application for a medical certificate.<sup>9</sup> Likewise, Administrator v. Arechavala, 3 NTSB 3060, 3061, 3062 (1980), compels a finding of disqualification. Although the petitioner in Arechavala did not have symptoms of psychosis when the Administrator denied the medical certificate, she previously had a psychotic episode, which we found sufficient for disqualification. In the instant case, the airman medical record contains multiple reports referring to disorganized thinking and behavior (which, under the regulation, is sufficient to constitute a history of psychosis), and other symptoms of psychosis.

The law judge erred in the instant case when he substituted his interpretation of the regulation for the Administrator's interpretation.<sup>10</sup> The law judge opined that the phrase, "or

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<sup>9</sup> Administrator v. Bohnen, 1 NTSB 1882, 1883 n.8 (1972).

<sup>10</sup> See, e.g., 49 U.S.C. 44709(d)(3):

... the Board is not bound by findings of fact of the Administrator but is bound by all ... interpretations of ... regulations the Administrator carries out ... unless the Board finds an interpretation is arbitrary, capricious, or otherwise not according to law.

As pointed out, supra, counsel for the Administrator repeatedly pronounced, at the hearing and in his appeal brief, the position of the Administrator regarding the definition of psychosis.

other commonly accepted symptoms of this condition," which appears in the FAR definition of psychosis, "is a direct referral to the Diagnostic and Statistic [sic] Manual, DSM-IV." Initial Decision at 684. The law judge stated, essentially, that without further guidance from the Board, he would require the Administrator to "com[e] forward" with evidence establishing that the FAR definition does not require a DSM diagnosis. Id. at 684-85.

Interestingly, just after this statement, in discussing the overall appropriateness of the federal air surgeon's denial of the medical certificate based on the other evidence in the case, the law judge said: "Actually, the burden is on Petitioner to show that [the denial of the medical certificate] was inappropriate." Id. at 685. Petitioner had the same burden regarding the psychosis issue, and the law judge failed to recognize this.

We surmise that the law judge may be confused with regard to "symptoms" versus "diagnosis." Earlier, when beginning the discussion about his perceived lack of diagnosis of psychosis, the law judge said, "Let me talk about these *diagnosed and undiagnosed symptoms*." Id. at 684, emphasis added. Then, when concluding his discussion regarding the diagnosis of personality disorder, he said:

I think the evidence is clear throughout this long



history of medical healthcare providers that Petitioner has seen, there is clearly established, the OCD, the obsessive compulsive disorder, the major depression, the major personality disorder, all under personality disorder of the regulation. I think with that diagnosis, which is found by all of these healthcare providers and supported by the testimony of [experts] and particularly those examples ... about the impact on aviation, I find that Petitioner has not met his burden of proof in overcoming this denial [of the medical certificate].

Id. at 685-86. The applicable regulation requires petitioners to have no established medical history or clinical diagnosis of psychosis, and no other personality disorder that the federal air surgeon finds makes the person unable to safely perform the duties of the airman certificate. The law judge appears to have overlooked the medical history of psychosis and focused solely on the diagnosis. Regardless, we find that there is ample evidence in the record to support both a medical history and a clinical diagnosis of psychosis.

As to petitioner's appeal regarding the law judge's affirming the denial of a medical certificate based on an established history and clinical diagnosis of a personality disorder, we find, based on the discussion above, that his arguments challenging the Administrator's sufficiency of proof simply have no merit. Any arguments not specifically mentioned herein have been considered and rejected. Overall, we find that the evidence in petitioner's airman medical file is sufficient to render petitioner ineligible for a medical certificate.

In conclusion, petitioner has not met his burden of proving that he is eligible for a second- or third-class medical certificate. As such, we affirm the law judge's initial decision in that regard.

**ACCORDINGLY, IT IS ORDERED THAT:**

1. Petitioner's appeal is denied;
2. The Administrator's appeal is granted;
3. The finding of the law judge as to the failure of the Administrator to establish a medical history or clinical diagnosis of a psychosis is reversed; and
4. The denial of petitioner's application for a medical certificate under 14 C.F.R. §§ 67.207(a)(1) and (2) and 67.307(a)(1) and (2) is affirmed.

ROSENKER, Acting Chairman, and SUMWALT, HERSMAN, HIGGINS, and CHEALANDER, Members of the Board, concurred in the above opinion and order.

UNITED STATES OF AMERICA  
 NATIONAL TRANSPORTATION SAFETY BOARD  
 OFFICE OF ADMINISTRATIVE LAW JUDGES

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Petition of:

GEORGE BRUCKERT III

for review on the denial by the  
 Administrator of the Federal  
 Aviation Administration of the  
 issuance of an airman medical  
 certificate.

\* \* \* \* \*

Docket No.: SM-4788  
 JUDGE MULLINS

Dirksen Federal Building  
 219 S. Dearborn Street  
 Courtroom 760  
 Chicago, Illinois 60604

Tuesday,  
 January 29, 2008

The above-entitled matter came on for hearing,  
 pursuant to notice, at 9:21 a.m.

BEFORE: WILLIAM R. MULLINS,  
 Administrative Law Judge

## APPEARANCES:

On behalf of the Petitioner:

GEORGE BULLWINKEL, ESQ.  
Bullwinkel Partners, Ltd.  
19 South LaSalle, Suite 1300  
Chicago, IL 60603-1493

On behalf of the Agency:

JAMES A. BARRY, Senior Attorney  
Office of the Chief Counsel  
Federal Aviation Administration  
Enforcement Division  
800 Independence Avenue, S.W.  
Washington, DC 20591

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ORAL INITIAL DECISION AND ORDER

ADMINISTRATIVE LAW JUDGE MULLINS: This has been a proceeding before the National Transportation Safety Board, and the hearing commenced here in Chicago on the 29th day of January of 2008. That was a Tuesday. We have proceeded through trial on Tuesday and Wednesday. Today is Thursday, the 31st of January 2008. The matter was on for hearing on the petition of George Bruckert III for a review of the denial by the Administrator, the Federal Aviation Administration, of the issuance of an airman medical certificate.

That letter of denial is probably in the file, but is also found in the evidence at Respondent's Exhibit 2. I

1 thought that was interesting. We started this out by, and I  
2 talked about how I would get Respondent's and Petitioner's  
3 confused and I see Petitioner has labeled all of his exhibits  
4 with an R, but it's Petitioner's Exhibit R-2 is the letter of  
5 denial from the Federal Air Surgeon. The basis of the denial  
6 was that the medical evidence revealed a history of obsessive  
7 compulsive disorder, psychosis, chronic paranoia, major  
8 depression, and significantly disabling personality disorder.

9           The petition was filed on behalf of the Petitioner by  
10 his counsel, Mr. George Bullwinkel, Esq., of the Bullwinkel  
11 Partners here in Chicago, and the hearing was held here in  
12 Chicago, Illinois. I didn't put that in the record. The  
13 Administrator was present throughout these proceedings and  
14 represented by Mr. James A. Barry, Esq., of the Federal  
15 Aviation Administration General Counsel's Office in Washington,  
16 D.C. The matter has been heard before me, William R. Mullins.  
17 I am the Administrative Law Judge for the National  
18 Transportation Safety Board, and as is provided by the Board's  
19 rules, I will issue a decision at this time.

20           As I said, the matter came on for hearing here this  
21 past Tuesday, the 29th of January, 2008 here in Chicago, and  
22 throughout this hearing the parties were afforded a full  
23 opportunity to offer evidence, to call, examine, and cross-  
24 examine witnesses. In addition, the parties were afforded an  
25 opportunity to make argument in support of their respective

1 positions.

2 DISCUSSION

3 Of course the issue in this case is whether or not  
4 the Administrator was justified in the denial of the airman  
5 medical certificate and in our medical cases as I believe was  
6 pointed out by Counsel for the Petitioner. The Petitioner has  
7 the burden of going forward with the evidence and establishing  
8 by a preponderance of the reliable and probative evidence that  
9 the denial of the issuance of that medical certificate was not  
10 justified.

11 Let me describe briefly the exhibits. Then I will  
12 talk about the different witnesses who testified here today.  
13 Then I'll give you some general thoughts and discuss a little  
14 bit the evidence in general, and then I'll announce my  
15 decision. There were huge volumes, not volumes of exhibits,  
16 but the exhibits represented huge volumes of paperwork. The  
17 Administrator's exhibit, and I'll talk about the  
18 Administrator's exhibits first because they sort of came in  
19 first, at least A-1, which is the airman medical records for  
20 the Petitioner, and that was, I don't know, maybe 1,500 pages  
21 or probably more. The total pagination here today of all of  
22 this was probably 3,000.

23 So, it's been a particularly difficult trial, not  
24 only for me to keep up with the different pages, but also for  
25 counsel. So, having said that, let me see if I can wade

1 through some of this.

2 A-1 was the airman medical record for the Petitioner.

3 Exhibit A-2 was the hospital records from Forest  
4 Hospital, which was a hospitalization of this Petitioner back  
5 in '89, I believe, or perhaps even earlier than that.

6 Exhibit A-3 was the deposition of Dr. Vuckovic, his  
7 Curriculum Vitae, and also the hospital records from McLean  
8 Hospital which is all part of, as I understand it, including  
9 Dr. Vuckovic are all related to the Harvard Medical School.

10 A-4 was the additional notes from Dr. Damptz that  
11 weren't included in A-1.

12 A-5 were additional notes from, and I can't even read  
13 my writing here, but they were also some additional notes and  
14 they're so noted at A-5.

15 A-6 was Dr. Elliott's CV.

16 A-7 was some of the high school records of this  
17 Petitioner, which Dr. Elliott talked about a little bit.

18 Exhibit A-8 was the deposition of Dr. El-Yousef.

19 Exhibit A-9 was the raw data from Dr. Brody's  
20 psychological testing, which was part of the McLean  
21 hospitalization.

22 A-10 were the progress notes in a sort of a general  
23 summary letter from a Dr. Babb.

24 A-11 is the Curriculum Vitae of Dr. Weiss.

25 A-12, 13, 14 and 15 were articles identified by



1 Dr. Weiss that referred to the recurrence of the symptoms that  
2 we'll talk about in a little bit.

3 The Petitioner had Exhibits R-1 through 7.

4 R-1 was Mr. Bruckert's application for second class  
5 medical, which was denied.

6 R-2 was the Administrator's letter of denial.

7 R-3 was the summary report of Dr. Robert Damptz,  
8 M.D., and Dr. Damptz testified here in person.

9 R-4 was the summary report of  
10 Dr. Altman, M.D. He also testified here in person.

11 R-5 was a letter from Dr. Babb and that may not have  
12 been part of her notes earlier, but this exhibit went along  
13 with A-10, which were the progress notes from Dr. Babb.

14 And R-6 was the statement of Petitioner and his  
15 father.

16 And then R-7 were the notes that Dr. Elliott was  
17 referring to when he testified.

18 I believe that covers all the exhibits. I may or may  
19 not refer to them again as I go through my discussion of the  
20 witnesses, but I have considered all of those things in  
21 arriving at my decision today.

22 The first witness called by the Petitioner was John  
23 Cervený, who is an attorney locally, and has known the  
24 Petitioner since they were both around age 5 or 6. He  
25 testified that he not only had known him, but he went on

1 vacations with Petitioner's family. I do distinctly recall  
2 when asked about what their family situation was like, he was  
3 very reserved and took a long time to answer, but apparently  
4 even he recognizes the records would reflect that there was a  
5 lot of turmoil in the home that Petitioner grew up in. He  
6 further testified that he knew of the hospitalization but that  
7 there were no drugs or alcohol issues involving this  
8 Petitioner.

9           I would say just across the board that there is  
10 nothing in the evidence here today that would indicate any drug  
11 or alcohol abuse on the part of this Petitioner. In fact, I  
12 think the evidence would be that there was only one time that  
13 he had one beer, and I don't think it's even been offered.  
14 There was some talk about it during the evidence but that's  
15 just not what we are for today.

16           Second witness was Jeffery Pluta. He's a  
17 firefighter/ paramedic, a friend of Petitioner and there was  
18 testimony from Mr. Pluta, maybe even Mr. Cerveney, but certainly  
19 Mr. Pluta and Ms. Raich, that Petitioner was involved in some  
20 swing dancing and I think that's where Mr. Pluta said he met  
21 him, or maybe it was Ms. Raich, or maybe both of them met him  
22 in that environment. He said that he had, I think his  
23 testimony was that he'd known of the hospitalization, but he'd  
24 never seen anything abnormal about his personality.

25           Ms. Raich testified she was witness for, but I'll go

1 ahead and cover her briefly because I'll come to Mr. Bruckert,  
2 but she testified that she had known Mr. Bruckert, Petitioner,  
3 since about 2001. She knew of some of his hospitalization but  
4 she didn't feel like there was anything abnormal about his  
5 personality.

6           Mr. Bruckert was called to testify and in fact  
7 testified three or four different times because we kept  
8 breaking his testimony up to accommodate the schedule of the  
9 doctors involved. But, in any event, he testified about this  
10 history that he has that started back when he was in high  
11 school, being hospitalized for some personality problems, and  
12 he testified about those different, there were either three or  
13 four hospitals, the Forest Hospital, Rock Creek Hospital; there  
14 was the Fairwinds Hospital and the McLean Hospital were all  
15 hospitalizations, plus, some incidents or stints in some  
16 outpatient treatment centers. I believe Mr. Bruckert is now 38  
17 or 39 years old and he has been having these problems since he  
18 was in high school, off and on since that time; although, the  
19 testimony seems to be rebutted that he hasn't had any  
20 medication in probably the last three to four years and hasn't  
21 had any relapses in the last three or four years; although, the  
22 notes from Dr. Babb would indicate some observations on her  
23 part that he is probably still having some problems.

24           Mr. Bruckert testified about all of the inaccuracies  
25 in the medical record. Now, I'm going to spend a little bit of

1 time talking about that in a few minutes, but he pointed out  
2 several things that he felt was inaccurate including, and  
3 probably the most obvious was the one down at Fairwinds when  
4 Dr. El-Yousef put in his report that he had a brother that had  
5 had some medical problems or something when in fact  
6 Mr. Bruckert is an only child. But, like I said, I'll come  
7 back and address that.

8           The next witness, and the fifth witness, called by  
9 Petitioner was Dr. David Altman. Dr. Altman is M.D., Board-  
10 certified in psychiatry. He also has served as an FAA  
11 consultant in medical psychological issue, personality disorder  
12 issue cases. In his letter he testified that he had spent nine  
13 and a half hours in person with Mr. Bruckert and another nine  
14 and a half hours on the telephone with Mr. Bruckert, and had  
15 reviewed the records. Dr. Altman testified here that he would  
16 recommend a special issuance of a medical certificate, which I  
17 have no jurisdiction or authority to consider, but he did  
18 testify that he could not qualify and/or recommend this  
19 Petitioner for an unrestricted medical certificate.

20           The next witness called was Dr. Damptz, and  
21 Dr. Damptz has been Petitioner's doctor since apparently about  
22 age 19 or 20. Dr. Damptz has diagnosed Petitioner with the  
23 obsessive compulsive disorder (OCD), and I'll probably refer to  
24 it as OCD because it's like a tongue twister for me. I don't  
25 know why, but every time I see OCD, I have to stop and almost

1 write it out before I can say it, so I may just say OCD through  
2 this record. He had diagnosed this a number of years ago and  
3 had treated and recommended medicine to treat this, and  
4 Dr. Damptz went through a fairly long recitation of the history  
5 of pharmaceuticals in the area of psychiatry and mental health  
6 areas and I was very impressed by that. And I'll talk about  
7 that in general in a little bit, but obviously Dr. Damptz is  
8 very well qualified in his field. He did not believe, and this  
9 was a continuing thing, too, this thing about psychosis, he  
10 didn't believe there was any psychosis. He felt that  
11 Petitioner should be granted an unrestricted airman medical,  
12 although Dr. Damptz did testify that he has no background in  
13 aviation medicine and he's not a pilot.

14           After Dr. Damptz testified, the Petitioner rested.  
15 Dr. Elliott was called. Dr. Elliott is a Ph.D. psychologist.  
16 He testified about his review of the records, and if I didn't  
17 say that, this was the Administrator's first witness.  
18 Dr. Elliott obviously had spent a lot of time going over these  
19 records. His opinion was that the records did reflect  
20 psychosis, personality disorder, major depression and obsessive  
21 compulsive disorder, OCD. Dr. Elliott started with the high  
22 school records and talked about it. Apparently Dr. Elliott has  
23 a large exposure over the years to public school psychological  
24 testing and he talked about these high school records and some  
25 of the testing and some of the indications in there that would

1 show that Petitioner was having problems even in his high  
2 school years.

3 Dr. Elliott then talked about A-9, which was  
4 Dr. Brody's psychological evaluation and I thought it was  
5 interesting, and of course Dr. Brody is a part of the McLean  
6 Hospital group of people, but I think several of the medical  
7 professionals that have testified talked about the really  
8 exceptional job that has done on this evaluation and some of  
9 that came out. Dr. Vuckovic, he did testify. Dr. Elliott  
10 testified that even though there were indications of psychosis  
11 in Dr. Vuckovic's testimony and those records, that there was  
12 no diagnosis of psychosis from the McLean Hospital. I think it  
13 was interesting that none of the hospitals or healthcare  
14 professionals diagnosed psychosis.

15 There was testimony from both Dr. Elliott and  
16 Dr. Weiss that there were indications throughout these records  
17 of psychosis, but none of those facilities diagnosed psychosis.  
18 Then, and there was a lot of testimony, Dr. Elliott spent a  
19 long time in the witness chair and I won't go through all of  
20 that. Most of it was just a review of all this medical  
21 testimony, but he did talk about Dr. Babb's progress notes and  
22 how, even as a lay person, I could read those notes and see  
23 that they didn't necessarily jibe with her overall summary  
24 which indicated that Petitioner was okay. But, her notes  
25 didn't necessarily indicate that.

1           Dr. Weiss then was the second witness called by the  
2 Administrator and the last witness. And Dr. Weiss is an M.D.,  
3 psychiatrist, Board-certified, as was Dr. Damptz and  
4 Dr. Altman. He testified, and I enjoyed his testimony. He  
5 talked about psychiatry being one big grey mushy area, and yes,  
6 that's pretty much what I thought when I heard these cases, but  
7 I'm a layperson.

8           He testified about some of these records and so  
9 forth. He talked about and identified Exhibits A-12 through 15  
10 which were these articles that established that these diagnosed  
11 symptoms of Respondent were most likely to reoccur in his  
12 lifetime. There was some question about, Dr. Weiss testified  
13 that he had an airline transport pilot certificate and was a  
14 flight instructor, but I thought he had a very good analysis of  
15 how these diagnosed personality disorders could impact aviation  
16 and he took each one of them and he gave examples. I don't  
17 believe I'd ever heard that in the context of these kinds of  
18 cases and I was impressed by his ability to put that in a  
19 little bit more understandable light from my perspective.

20           After Dr. Weiss, then Dr. Damptz was recalled in  
21 rebuttal and he talked about the importance as a diagnosing  
22 physician to have personal contact with the patient versus  
23 reviewing hospital records and notes of other healthcare  
24 professionals. He also talked about these articles as really  
25 as the articles were, and I don't know that Dr. Weiss said

1 this, but obviously the articles as Dr. Damptz testified were  
2 over a large portion of the population. Dr. Damptz said that  
3 they just didn't apply to any given individual, but it was a  
4 whole lot of people. I gathered from that that he felt like  
5 those didn't apply to Mr. Bruckert.

6           Mr. Bruckert then also was called in rebuttal he  
7 again was taking issue with some of the notes and findings of  
8 the healthcare people. Also, counsel took him through a very  
9 extended examination based on Dr. Elliott's notes.  
10 Dr. Elliott's notes were admitted as Petitioner's Exhibit R-7,  
11 and those were notes that he prepared for his testimony. It  
12 was just a list of all of the things that he had gathered from  
13 these records. Most of them were footnoted with pagination as  
14 to where that reference was made.

15           But in any event, Mr. Bullwinkel took Mr. Bruckert  
16 through that list, and again, Mr. Bruckert was taking issue  
17 with a lot of these findings, but some of them I thought  
18 interestingly he admitted, which I thought was sort of unusual  
19 given the context of it being in a rebuttal. For example, he  
20 did admit the three different suicide incidents. He talked  
21 about the car and the garage, having the rifle, thinking about  
22 killing himself, and then it accidentally went off and went  
23 through the roof, then the time he was hospitalized down in  
24 Florida after overdosing on the Valium. So, he admitted those  
25 things though he said that he never had the intent.



1           He admitted the long showers. He distinguished the  
2 long showers from the one that was four to six hours that he  
3 had to take, which he said was punishment for taking long  
4 showers. He also admitted the sexual fantasies involving the  
5 mutilation. So, some of these things were explained in his,  
6 were admitted in his examination on rebuttal. That pretty much  
7 is the witnesses and the exhibits.

8           Let me make some general comments now about the  
9 evidence. First of all, in a period of time prior to being a  
10 Federal Administrative Law Judge, I was a State District Judge.  
11 During that period of time, for 15 years, I received many phone  
12 calls in the middle of the night seeking an order from  
13 healthcare professionals to have somebody on an emergency basis  
14 admitted to mental health facilities. Then we would have to  
15 follow-up, I think, within 24 to 48 hours with a hearing  
16 concerning that.

17           So, over the years, I've heard a lot of medical  
18 testimony in relationship to health, mental health issues.  
19 Also, during that period of time, I had presided over many jury  
20 trials involving personal injury and injury and even medical  
21 malpractice cases where I've heard a lot of medical testimony.  
22 I'll tell you this up front, one of the great things about  
23 hearing these cases, these Federal Aviation cases, is the  
24 quality and expertise of the medical professionals that I've  
25 heard, including Dr. Damptz, Dr. Altman for the Petitioner,

1 Dr. Elliott and Dr. Weiss. I've heard Dr. Chesanow testify  
2 previously, and the credentials, the ability to testify and  
3 present their points has just been exceptional. So, from that  
4 standpoint, these are enjoyable cases.

5           The issues are often not enjoyable, so I'll push on  
6 to those. Probably one of the biggest issues that I've had  
7 over the years, and I continue to have, and I've had it with  
8 Mr. Barry previously, is this reliance, and I understand there  
9 has to be a reliance, on medical records. But, the suggestion  
10 that these things are prepared by healthcare professionals and  
11 they're just not wrong, is wrong. For example, in this case,  
12 Dr. El-Yousef admitted that he had erred, or somebody on his  
13 staff had erred, when they put down that Petitioner had a  
14 brother. Then, he got quite angry when other parts of it were  
15 questioned, and I think he got angry because, how dare you  
16 question me, you can't prove that that's wrong. I mean, he had  
17 to admit that this Petitioner didn't have a brother, but he  
18 didn't have to admit any of that other stuff.

19           Counsel talked about these highly trained  
20 professionals. In this very room, a year ago, we had a highly  
21 trained federal aviation investigator who wrote in her report,  
22 that was part of a medical record, that this witness was a  
23 known drug addict and drug user. Well, the witness then took  
24 the stand and was probably the best witness that the  
25 Administrator had, and she testified that she told that

1 investigator that her son was the drug addict and the drug  
2 user. This highly trained investigator wrote that in her  
3 findings that became part of this petitioner's medical record.  
4 I know how highly trained those people are. How could she have  
5 made that mistake? If she could make that mistake on something  
6 that simple, or Dr. El-Yousef make that mistake on something so  
7 simple, as whether he had a brother or not, how could you even  
8 suggest that the rest of the record does not contain some  
9 errors?

10           Typically, in all the medical cases I hear, in fact I  
11 had a motion for summary judgment in this case except, well,  
12 the medical record supports this, and I would almost address as  
13 far as this judge is concerned, just this one note from Dr. El-  
14 Yousef that he erred in writing this down about the brother  
15 would forever preclude me from even considering that summary  
16 judgment be appropriate in a medical case if the Administrator  
17 comes in and says it's based on the medical record. Someday  
18 maybe we'll have a case where petitioner has the wherewithal  
19 and it's probably a money issue to go back and interview every  
20 one of these people. But the problem there is that nobody  
21 knows.

22           Most of these medical professionals, and I'm not  
23 talking about the doctors, but most of these people, the intake  
24 people who write down this history, they are nameless; they are  
25 faceless. Their training is never identified, questionable.

1 So, I just have a problem with that. But, having said that,  
2 I'll say this: this period of hospitalization from high school  
3 through just after two or three years ago, and major  
4 hospitalization for weeks at a time at either three or four  
5 different facilities, would indicate that there is some problem  
6 that wasn't just because of somebody writing something wrong in  
7 a report.

8           One of the issues, I think it was talked about with  
9 Dr. Altman, Dr. Altman talked about this Petitioner minimizing  
10 his symptoms. He minimizes this and I think in my perspective  
11 and experience here, at one point in time when Petitioner was  
12 getting ready to step down from the bench, he talked about  
13 what's wrong with people having a little bit of depression. I  
14 mean, you know, why are we here, kind of a comment. I was  
15 thinking, after all the years that I've heard these cases, I've  
16 never seen anyone with 3,000 pages of medical records and to  
17 suggest it was just depression is certainly a minimization of  
18 all this material that I have up here.

19           Let me talk about these diagnosed and undiagnosed  
20 symptoms. First of all, I'll tell you that I'm going to rule  
21 against Petitioner in this case today. I don't think under the  
22 record that it's necessary that I find psychosis. My concern  
23 is the Administrator takes the position that the psychosis,  
24 which was not diagnosed by any of these hospitals, but sort of  
25 obliquely referred to, that that is sufficient under the

1 Federal Aviation Regulation to find psychosis. The Federal  
2 Aviation Regulation talks about psychosis, refers to a mental  
3 disorder in which the individual has manifested "delusion,  
4 hallucinations, grossly bizarre or disorganized behavior, or  
5 other commonly accepted symptoms of this condition. Or other  
6 commonly accepted."

7 I think that, in my opinion, is a direct referral to  
8 the Diagnostic and Statistic Manual, DSM-IV that's being used  
9 now, which talks about that which all of these healthcare  
10 professionals would have been in reference to, and I certainly  
11 believe that the Administrator and the Federal Air Surgeon can  
12 take a different position, but I think in our cases, and for my  
13 purposes, unless I'm told otherwise by the Board, my reviewing  
14 folks, that I'm going to have to have some evidence to say,  
15 well, here is what the DSM-IV says about psychosis. This is  
16 what the Federal Aviation Regulation says about psychosis and  
17 this is why there is a distinction.

18 I did not have that sort of testimony here today.  
19 And I think the comment in both paragraphs referencing  
20 psychosis about "or other commonly accepted symptoms," I think  
21 that's a direct reference to DSM-IV because I don't know where  
22 one would find other commonly accepted symptoms of this  
23 condition. And both paragraphs under psychosis relates to  
24 that.

25 So, I think if there is something different that the



1 be, and the same is, hereby denied.

2

3

4 EDITED AND DATED ON

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WILLIAM R. MULLINS

5 FEBRUARY 26, 2008

Administrative Law Judge